

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)
)
HIGHLAND CELLULAR, INC.)
) CC Docket No. 96-45
Petition for Waiver of)
Sections 54.802, 54.809(c), and 54.307(c))
of the Commission's Rules)

PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED

Highland Cellular, Inc. ("Highland"), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. §1.925, hereby requests a waiver of Sections 54.802(a), 54.809(c), and 54.307(c) of the Commission's rules, 47 C.F.R. §54.802(a), 47 C.F.R. §54.809(c), and 47 C.F.R. §54.307(c).¹ Highland requests that the Commission waive these rules to accept Highland's annual certification for interstate access support and its line count submissions for interstate access and high cost model support, which were submitted on or prior to the applicable deadlines, but received by the Commission after the deadline, so that vital interstate access support and high cost model support continues to rural West Virginia without interruption². In support of this Petition, the following is respectfully shown:

I. BACKGROUND

In May 2002, Highland obtained Eligible Telecommunications Carrier (AETC@) status in the state of West Virginia to provide universal service to subscribers in areas served by a non-

¹ No fee is required to be submitted with this request.

² For the Commission's convenience, copies of the certifications, as filed, are attached hereto as Exhibit A.

rural local exchange carrier.¹ Highland is entitled to receive interstate access and high cost model support in West Virginia in its designated ETC service area. Because Highland is a small cellular carrier serving only sparsely populated areas in West Virginia and Virginia, both forms of support are critically important to Highland's operations. Such support assists Highland in providing a quality universal service offering to the underserved rural communities. It would be extreme and inequitable to penalize Highland by cutting off interstate access support for an entire calendar year and high cost model support for a calendar quarter for missing the certification and line count filing deadlines by no more than two days.

The FCC Rule Sections involved in this request for waiver are as follows:

- Section 54.809(c): In order to receive interstate access support, a carrier serving lines in the service area of a price cap local exchange carrier "must file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to §54.802, and thereafter on June 30th of each year." 47 C.F.R. §54.809(c).
- Section 54.802(a): In order for an ETC to be eligible for interstate access support, interstate access line count filings must be submitted no later than the last business day of March, June, September, and December of each year. 47 C.F.R. §54.802(a).
- Section 54.307(c): In order to be eligible for various types of high-cost support, a competitive eligible telecommunications carrier must submit its line count data on a quarterly basis in March, July, September and December of each year.² 47 C.F.R. §54.307(c).

Highland's first annual interstate access certification, required by 54.809(c), and its first interstate access line count data, required by 54.802(a), were received by the Commission on July 1, 2002, one day after the applicable deadline. Highland mailed its interstate access certification and initial interstate access line count data to USAC on June 28, 2002 with the belief that the due date meant that both submissions had to be post-marked by June 30, 2002.

¹

Recommended Decision In the Matter of Highland Cellular, Inc. Petition for Consent and Approval To Be Designated As An Eligible Telecommunications Carrier, Case No. 01-1604-T-PC, May 10, 2002 (Final Order May 30, 2002).

² Section 54.309(a)(4) of the rules notes that the amount of support available is derived from the line count data submitted pursuant to Section 54.307(c).

Based on this continued belief, and without notification from USAC to the contrary, Highland followed the same procedure with respect to its high cost line count data, required by §54.307(c), which were due July 31, 2002 and September 30, 2002. Highland followed the same procedure with respect to its interstate access line count data, required by §54.802(a), due September 30, 2002.

Highland's July line count submission was mailed and postmarked on July 31, 2002 and the September filings were mailed and postmarked September 30, 2002. Highland, at the time acting without the benefit of FCC counsel, simply read the rule to require that the certification and line count filings had to be postmarked by the due date, as is required for all regulatory filings in the state of West Virginia and for most other federal filings, such as federal tax returns.

Highland expected interstate access and high cost model support to commence in December. When it did not, Highland telephoned USAC and engaged FCC counsel in mid-December to investigate. In late December, USAC reported to Highland that the reason interstate access and high cost model support has not commenced is because its interstate access certification and line count data was not received on or before the June 30 and July 31 deadlines, respectively. Highland now understands that the Commission interprets 54.809(c), 54.802 and 54.307(c) to mean that a certification and/or a line count submission is required to be *received* at USAC on the due date.

II. ARGUMENT

The underlying purpose of the rules would not be served by its strict application in the instant case. The certification rule referenced above is intended to cause licensees to place into the record *prima facie* evidence that they have complied, and will comply with, the FCC's requirements with respect to the use of interstate access support. Highland has in fact complied with the certification and line count filing requirements, albeit one day late. Accordingly, denying interstate access and high cost model support funding to Highland on the basis of a late-filed certification would not serve the purpose of causing Highland to come into compliance with commitments made in its certifications.

Likewise, line count filings submitted no more than two days late should be accepted. The information contained in the line count filings enables USAC to anticipate projected support amounts and despite being received no more than two days late, USAC has had full opportunity to review, compile and publish the data in anticipation of future funding requirements. USAC has not been prejudiced by an inability to use the filings – indeed only the public will be prejudiced if support is not provided.

As a new ETC, June of 2002 was the first time Highland has had to file certifications and line count data. The only reason Highland missed the applicable deadlines is that without the benefit of expert counsel, it acted under the mistaken belief that the rules required that the filings be postmarked by the due date.

When Highland missed the June and July deadlines by one day, USAC did not inform Highland of its error and Highland had no reason to believe its submissions were not properly made. As a result, Highland's September filings were made pursuant to the same procedures. It was not until expected funding did not arrive that Highland contacted USAC and retained counsel, who determined that applicable deadlines had been missed.

Highland made every effort to comply with the Commission's rules. Highland has obtained FCC counsel to ensure that all of the necessary deadlines associated with its ETC status are met. More important, Highland is an ETC and is offering universal service to subscribers in West Virginia, and is actively working with the West Virginia Public Utilities Commission to advance Lifeline and Linkup support in the state. Given that Highland is taking on the responsibilities of an ETC, it would be grossly unfair to deny support simply because it missed a filing deadline by only one or two days. No other party will be prejudiced by a grant of this waiver request and rural West Virginians expecting rapid deployment of facilities will be harmed by its denial.

Furthermore, the FCC has granted similar requests in the past.³ In the case of Smith Bagley, Inc. (“SBI”) the Commission found that a limited waiver of FCC Rule Section 54.809(c)

³ *Order In the Matter of Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission's rules and Regulations*, CC Docket 96-45, DA 01-1911 (Released August 15, 2001).

was warranted since SBI was newly eligible to receive support, SBI immediately remedied its omission upon discovery, and SBI represented that it continued to comply with the commitments made in its late filed certification. These special circumstances are present in the instant case.

Grant of this request would serve the public interest. The universal service program is intended to promote access to advanced services in areas where telephone subscribership has been historically low. Highland's universal service program furthers this goal. Highland is entitled to interstate access support and such funding will enable Highland to construct new facilities to provide quality service to West Virginians. Without interstate access support, Highland may be forced to slow the construction of planned system upgrades which will only harm consumers.

III. REQUEST FOR EXPEDITED ACTION

Highland requests expedited action on this Petition in order to avoid any interruption in receiving interstate access and high cost model support so that such support may continue uninterrupted. Highland has made substantial commitments to construct additional facilities in West Virginia. In the absence of expedited action, Highland expects to delay system construction and upgrades planned for 2003 based on anticipated interstate access and high cost model support.

IV. CONCLUSION

For the reasons set forth above, Highland respectfully requests a waiver of Sections 54.809(c) and 54.802. Highland asks the Commission to accept Highland's interstate access certification and June and September 2002 line count filings so as to permit interstate access and high cost model support to continue uninterrupted.
Respectfully submitted,

HIGHLAND CELLULAR, INC.

By: /s/
David A. LaFuria
B. Lynn F. Ratnavale
Its Attorneys

Lukas, Nace, Gutierrez and Sachs, Chartered

1111 19th Street
Suite 1200
Washington, D.C. 20036
(202) 857-3500

January 17, 2003

DECLARATION UNDER PENALTY OF PERJURY

I, Carrie Gumm, do hereby declare under penalty of perjury as follows:

1. I am the Manager of Business Operations of Highland Cellular, Inc. ("Highland Cellular").
2. This Declaration is submitted in support of Highland Cellular's Petition for Waiver ("Petition").
3. I am personally responsible for preparing and filing all certifications and line count submissions that are required as a result of Highland Cellular's ETC designation in West Virginia.
4. I am not an attorney, nor did I receive advice from counsel with respect to FCC rules or filing procedures in making the filings referenced in the Petition.
5. At the time all filings referenced in the Petition were made, it was my understanding that the filing deadlines required in FCC Rule Sections 54.809(c), 54.802 and 54.307(c) meant that the filings had to be postmarked by the associated deadlines as is the requirement for West Virginia Public Service Commission filings and most other federal agencies.
6. I personally placed the certification and line count filings due June 30, 2002 in the United States Postal Service mail on June 28, 2002.
7. I personally placed the line count submission due July 31, 2002 in the United States Postal Service mail on July 31, 2002.
8. I personally placed the line count submission due September 30, 2002 in the United States Postal Service mail on September 30, 2002.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 17, 2003.



Carrie Gumm
Manager of Business Operations
Highland Cellular, Inc.